

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

SEPTEMBER 13, 2012

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, September 13, 2012, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
James Dissen (via telephone)
Dan Marshall

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the July 5, 2012 meeting were sent out. I am sure everybody received them and had a chance to look at them. Is there a motion to approve the minutes as stated?

Dan Marshall made the motion to approve the minutes from the July 5, 2012 meeting. The motion was seconded by James Dissen and passed unanimously.

3. Office of Judges Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: Good afternoon. I am here today to tender the report of the Office of Judges with statistics for the month of August, and I sent this to you yesterday evening. I am happy to report that all seems to be going well within our office, just some highlights of this report.

We acknowledged 459 protests in the month of August, which is a little down from what we normally acknowledge on a monthly basis. It appears as if the projected total for litigation for calendar year 2012 will be about 100 protests less than last year. So, litigation does appear to be slightly on the decline.

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Other highlights that I know you are interested in [page six] with regard to our Final Decision Compliance, which Alan [Drescher] and I just discussed. We're both very pleased with the numbers with regard to the timeliness in which our decisions are going out the door, and you'll see that almost all of them are going out within 60 days. If there are any specific questions about the actual numbers in the report, I'd be happy to take any questions you may have.

Chairman Dean: Mr. Hartsog, do you have any questions?

Kent Hartsog: None.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Dissen, do you have any questions?

James Dissen: No, sir.

Judge Roush: Just a couple more points that I would like to make outside of the report. I will note that our Fall Workshops for the Office of Judges will be held in the month of October. This is when we have an opportunity to meet with counsel or anybody interested in litigation before our office and provide some insight into issues that we're experiencing, and give information related to workers' compensation litigation. Our first meeting will be held at the Waterfront Place Hotel in Morgantown on October 23, 2012; and our second meeting will be held in Charleston at the Charleston Town Center Marriott on October 30, 2012. I'll send out a flier to all of those interested.

Also, I wanted to point out that we do have a new hire in our office. I am really pleased to announce that Kristin Halkias has joined our office as Deputy Chief Administrative Law Judge. You may remember Kristin from her position as Associate Counsel with OIC Legal Services. She is a graduate of the West Virginia University College of Law and Wittenburg University in Springfield, Ohio. She has considerable workers' compensation experience. She has also worked both in the public and private sector, and we are really pleased to have her join our office and believe she can continue to help us move the Office of Judges forward.

Chairman Dean: Mr. Hartsog, do you have any questions?

Mr. Hartsog: Just one quick one. . .just offer an opinion if you would.

Judge Roush: Yes, sir.

Mr. Hartsog: Medical claims, okay. There's a lot of discussion going on. There's some discussion going on with regard to whether or not claimants need. . .there is unreasonable denials of medical care, and for that reason be better served by having attorneys representing claimants in that regard versus the system we have, or versus them. . .obviously getting those services themselves. What's your view in that regard, and the need in that process?

Judge Roush: It is obviously a very serious issue, one that is being discussed within our industry. The Access to Justice Committee has devoted considerable time and resources discussing. I don't know if it is appropriate for me to provide an opinion as to whether counsel should be provided. If there should be a statutory change. . .

Mr. Hartsog: What are you seeing from your position in the Office of Judges?

Judge Roush: I think we do see a considerable amount of pro se claimants, although I don't know that I have the numbers here in this report. Alan, if you would go ahead and look through it quickly and see if we have it in here. We do have a considerable amount of pro se claimants before our office. And I will say from what I have witnessed there is often a struggle for them to understand the process, to know how it works. We do our best to help them navigate the system without going so far as providing them advice. Of course, that's inappropriate for our office to do that. Are there claimants out there that have a difficult time with medical treatment issues, particularly in old claims where there is no longer an indemnity benefit for counsel to be paid from? Yes. I do think it is a legitimate problem. That's a fair answer.

Mr. Hartsog: Sure.

Alan Drescher, Deputy Chief Administrative Law Judge, Office of Judges: According to our statistics we have 464 claims currently in litigation involving pro se claimants.

Mr. Hartsog: What page is that on?

Judge Drescher: On page 15. They are not broken down so I couldn't tell you what issues are involved. We can get that information.

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Judge Roush: I would be happy to provide you a further breakdown of data with regard to the types of litigation which pro se claimants have before our office, if that is something you would be interested in.

Mr. Hartsog: Well, if there is a concern there that's getting bantered about. . .I guess I would just like any information. Because you can go too far in one direction or the other direction and you want balance. If there are any ideas on an appropriate system from those of you that know it best on how that could be structured, and whether or not we as an Industrial Council can do anything to look at that, certainly we would want to, just to drill into the detail of the 464. If you look at it and you think it would, sure.

Judge Roush: I will say that I regularly attend the Access to Justice meetings when they are held, as well as meetings of the Workers' Compensation Bar, the Subcommittee of the State Bar. For what it's worth all of the best attorneys in this State that study this subject are contemplating the very issue that you are discussing. I think it is fair to say that all of the legal minds that work in this industry are working on that matter as we speak.

Mr. Hartsog: With all due respect to attorneys, I am more into looking at it for practical solutions, and maybe not legal ones as far as who makes money off of. . .I'd rather see claimants treated fairly and quickly than I would attorneys be able to bill for their services.

Judge Roush: Well, I think that's a fair analysis. With regard to The Access to Justice Committee that is spearheaded by the Supreme Court Justice, Justice Benjamin. So, to the extent that there is a neutral governmental entity looking at it as well, that is in place. It will take a statutory change, of course, to effectuate any change, so that will also involve our Legislature.

Mr. Hartsog: And I've heard different opinions in that regard. I am just curious how that problem might be gotten at, and if there are any ideas out there to kick around.

Judge Roush: From my perspective I have seen opinions kicked around. I'm not really prepared to tell you about them today.

Mr. Hartsog: That's fine.

Judge Roush: I will go back and read the notes from all of the Access to Justice meetings that I have attended, and I can report back to you.

Mr. Hartsog: I don't want to re-plow the same ground. I was just curious what your perspective was since you're in the middle of it all the time.

Judge Roush: Right. We are in the trenches, and I do think that it is a legitimate problem.

Mr. Hartsog: Thank you.

Judge Roush: You're welcome.

Chairman Dean: Mr. Marshall, do you have any questions?

Mr. Marshall: No.

Chairman Dean: Mr. Dissen, do you have any questions for Judge Roush?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Dissen, can you hear everything okay?

Mr. Dissen: Yes, its fine, Bill. Thanks.

4. General Public Comment

Chairman Dean: Does anybody from the general public have a comment today?
[No comments from the public.]

5. Old Business

Chairman Dean: We'll move onto old business. Does anybody from the Industrial Council have anything they want to bring up under old business? Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Commissioner Riley?

Michael Riley, Commissioner, OIC: I believe the Council asked at the last meeting if we would give you an update on the Old Fund, so we have a short presentation. What you have here is a copy of the report that we give every month to the Legislature during the Joint Committee on Government and Finance Meeting. If you will turn to page seven, you will see a graphical representation of the Old Fund activity. We ended August 31, 2012 with 18,195 active claims with \$2.3 billion in case reserves. Obviously 18,195 is still a significant number, but that's down from 40,000 in 2008. As you can see the trend line is gone as you would expect on this closed portfolio. We close probably about 200 claims per month. I anticipate that will start slowing down. We had a settlement program that we've been actively doing for the last year or two. Obviously once you go through the book – once or twice – the appetite for settlement is just going to be there, it's not. So, I imagine it will start slowing down.

Turn to page eight, that's the Coal Workers' Pneumoconiosis Fund. Also a closed fund that we're responsible for – only 977 active claims there. As you can see that's been relatively flat for the past year, which is a good sign, with \$136 million in case reserves. Down at the bottom, left corner, there are 2,547 what we call "inactive claims." These are the individuals that have applied for these benefits and have been denied. The award was not given, but they still do have an appeal process. To some degree a pending liability that may be out there.

On page nine is the Uninsured Fund. There are only 30 active claims. What the Uninsured Fund is if an employer that's required to have mandatory workers' compensation coverage does not have that coverage, the State will step in for that injured worker, provide them with the workers' compensation benefits, and then our office goes after that employer to recover those funds and the cost of the claims. And also we get some monies for individuals who don't necessarily have claims but they will lapse in their workers' compensation coverage, and we have a division that goes after those. There are only 30 there, a million dollars, so that's looking good.

On page eleven, this is really all the details. It is the Old Fund Cash Statement. I draw your attention to the last three columns so you can see the trending here of fiscal year 2012 to 2011. We ended fiscal year 2012 with \$942,595,408.00 in the bank. At

the top are the dedicated revenue sources. We get \$95.4 million in personal income tax every year; severance tax was \$94 million dollars this year; the debt reduction surcharge, which is what's on everybody's workers' compensation policy in the private market; brings in about \$40 million dollars. We assess a similar surcharge to the self-insured community – we had \$9.6 million dollars. It's usually about \$9 million. In prior years it was \$8 million, and we try to balance that out to make it \$9 million every year. Video Lottery Funds, they dedicated \$11 million dollars; and the other funds there are just sort of ancillary funds. The employer premium is some recoveries we made from the old Workers' Compensation Commission on employer premiums. So that gives you operating revenue of about \$250 million dollars for 2012. You add in \$18 million dollars in interest, and we brought in \$268 million dollars in revenues.

It is important to point out this fund, as you can imagine, is a large portfolio with a long tail and obviously we rely on investments a lot to help pay down this unfunded liability. We didn't have a very good year in 2012 in investments. As you can see we only made \$18 million dollars. But if you look at the far left column for 2013 [under only one month's activity], our investment income is \$10 million. So, that trend appears to have turned. We're hopeful this year will continue that way, but obviously everybody in the whole world has been struggling with investments. I do believe that we are heading in the right direction. I think it was our August number; we got another \$12 million dollars during that month. We are going the right way.

At the bottom of the page are claims expenditures. The portfolio is shrinking, as it is a closed book. Total claims payments of \$251 million dollars for fiscal year 2012. That's \$14 million dollars in what we paid out last year; \$18 million in administrative expenses, which is \$2 million less than we paid out last year; for a total of \$269 million dollars. If you look at this just from just a cash basis, our expenses did slightly exceed our dedicated revenues this year primarily. As I pointed out, the investment returns were so poor last year. If you take the investment returns and set those aside and you compare 2010 to 2011 to 2012, the gap between expenses and revenues has dramatically shrunk. In 2010 it was \$53 million dollars and expenses greater than revenues – like I said not including investments – went down to \$34 million in 2011, and then 2012 it was \$19 million dollars. From that perspective, that picture there, obviously we are headed in the right direction. And hopefully we'll get to a place where we get just cash flow completely and we'll eliminate our unfunded liability.

On pages 12, 13 and 14 are the other smaller funds. If anybody has any questions on those, I can answer those too.

Chairman Dean: Mr. Hartsog, any questions?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Dissen I know that you're at a disadvantage.

Mr. Dissen: I don't have any questions. I just want to thank Commissioner Riley for following up on that question. Thank you.

Commissioner Riley: Sure, and I'll get you a copy of this also.

Mr. Dissen: Great. Thanks.

Chairman Dean: Anything else under old business?

6. New Business

Chairman Dean: We'll move onto new business. Does anybody from the Industrial Council have anything under new business? Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Commissioner?

Commissioner Riley: No, sir.

7. Next Meeting

Chairman Dean: The next meeting is Thursday, October 18, 2012. Does that meet with everybody's schedule? Is October 18 okay with you Mr. Dissen?

Mr. Dissen: Yes, sir.

8. Executive Session

Chairman Dean: The next order of business is Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Marshall: So made.

Chairman Dean: Is there a second?

Mr. Dissen: Second.

Chairman Dean: A motion made and seconded to go into Executive Session. Any question on the motion? All in favor signify by saying "aye." All opposed? The aye's have it. [Motion passed.] We will go into Executive Session.

[The Executive Session began at 1:24 p.m. and ended at 1:55 p.m.]

Chairman Dean: We are back in regular session. Mr. Pauley, would you like to continue?

Andrew Pauley, General Counsel, OIC: Thank you, Mr. Chairman. We will present to the Council the following Resolution. I will read it for everyone.

On this day, the West Virginia Offices of the Insurance Commissioner appeared before the Industrial Council and made a recommendation that the self-insured status of RG Steel Wheeling, LLC be revoked. Therefore, the Industrial Council finds the following:

WHEREAS, RG Steel Wheeling, LLC has filed for Chapter 11 relief under the United States Bankruptcy Code in Delaware, is a company doing business in the State of West Virginia and is self-insured under the auspices of W. Va. Code § 23-2-9; and

WHEREAS, RG Steel Wheeling, LLC has provided to the West Virginia Offices of the Insurance Commissioner notice that they will no longer honor their statutory obligation to pay and furnish workers' compensation benefits to its injured employees and dependents of its fatally injured employees effective August 24, 2012; and

WHEREAS, pursuant to W. Va. Code § 23-2-9 and W. Va. Code of State Rules § 85-18-15, the West Virginia Workers' Compensation Industrial Council has the authority to approve the recommendation of the Insurance Commissioner to revoke or terminate the self-insured status of any employer who fails to comply with the provisions in Chapter 23 of the W. Va. Code or Title 85 of the West Virginia Code of State Rules; and

WHEREAS, it has been determined that based upon RG Steel Wheeling LLC's own admissions, pleadings filed with the United States Bankruptcy Court and with filings or correspondence with the West Virginia Offices of the Insurance Commissioner, RG STEEL WHEELING, LLC is in deteriorating financial condition, "delinquent" and in "default" of its workers' compensation obligations under state law and does not intend to rectify or correct the situation as an obligation of its continuing affairs; and

THEREFORE, BE IT RESOLVED that the West Virginia Workers' Compensation Industrial Council hereby approves the recommendation of the West Virginia Offices of the Insurance Commissioner to revoke the self-insured status of RG Steel Wheeling, LLC effective September 13, 2012.

Chairman Dean: Any questions on the Resolution? Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No questions, Mr. Chairman. I would like to move the approval of the Resolution as read.

Chairman Dean: There is a motion to approve the Resolution as read. Is there a second?

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded. Any questions on the motion? All in favor signify by saying "aye." All opposed? The aye's have it. [Motion passed.]

9. Adjourn

Is there any other business to bring before the Industrial Council today? Seeing none, is there a motion for adjournment?

Mr. Dissen made the motion to adjourn the meeting. The motion was seconded by Mr. Hartsog and passed unanimously.

There being no further business the meeting adjourned at 2:01 p.m.